

## **CHAPTER 69-02-05 EVIDENCE**

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**69-02-05-01. Rules of evidence.** Evidence is admissible in accordance with the North Dakota Rules of Evidence. The commission or the hearing officer, however, may waive the rules of evidence where such waiver is necessary to ascertain the substantial rights of a party but only relevant evidence may be admitted. A waiver of the rules of evidence must be stated specifically. When objection is made to the admissibility of evidence, the hearing officer may receive the evidence subject to later ruling by the commission.

**History:** Amended effective September 1, 1992.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 49-01-07

**69-02-05-02. Witnesses.** Witnesses will be orally examined under oath unless their testimony is taken by deposition as provided in section 69-02-05-04. Written testimony of any witness may be received when properly supported by the oral testimony of its author on direct examination subject to cross-examination and motion to strike.

**History:** Amended effective September 1, 1992.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-06, 28-32-21.2, 49-01-07

### **69-02-05-03. Subpoena.**

1. Subpoenas for the attendance of witnesses or for the production of documentary evidence, unless directed by the commission upon its own motion, will issue only upon written application.
2. A party must show the general relevance and reasonable scope of the evidence sought before a subpoena will issue for the production of

documentary evidence. Subpoenas for the production of documentary evidence must be authorized in writing.

3. The cost of serving a subpoena must be paid by the party requesting it. Any witness who is subpoenaed under the provisions of this rule and who appears at the hearing must receive the same fees and mileage as witnesses in the district courts of this state, and the costs will be paid by the party at whose instance the witness appears. No witness fees will be allowed except on a subpoena.

**History:** Amended effective September 1, 1992.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-09, 49-01-07

**69-02-05-04. Depositions, interrogatories, and other discovery.**

Repealed effective July 1, 1998.

**69-02-05-05. Stipulations.** The parties may agree upon all or part of the facts involved in the controversy. A stipulation must be in writing unless made orally at the hearing and may be received as evidence at the hearing.

**History:** Amended effective September 1, 1992.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-05.1, 49-01-07

**69-02-05-06. Documentary evidence.** Where relevant and material evidence is embraced in a book, paper, or a document containing other matter not material or relevant, the offering party must plainly designate the relevant and material matter. If the other matter is so voluminous that it would unnecessarily encumber the record, it will not be received in evidence. It may be marked for identification and, if authenticated, the relevant and material matter may be read into the record, or copied and be received as an exhibit. All parties appearing at the hearing shall be afforded an opportunity to examine the entire book, paper, or document and offer in evidence any portion found to be material and relevant. Any matter contained in a report or other document on file with the commission may be offered in evidence by specifying the report, document, or other file containing the matter so offered.

**History:** Amended effective September 1, 1992.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 49-01-07

**69-02-05-07. Exhibits.** Exhibits must be on paper of good quality, be plainly legible and durable and may not exceed eight and one-half by eleven inches [21.59 by 28.21 centimeters]. If an exhibit exceeds the size limit, it is acceptable if it can be folded to conform to the size requirement. Whenever practicable, the sheets of each exhibit and lines of each sheet should be numbered, and, if the exhibit consists of five or more sheets, the first sheet or title page should contain a brief statement of what the exhibit purports to show with reference by sheet and line to illustrative

or typical example contained in the exhibit. Whenever practicable, documents sponsored by a single witness should be assembled and bound together, suitably arranged, and indexed so that they may be identified and offered as one exhibit. The source of all material contained in any exhibit should be shown.

1. **Copies.** Seven copies of each exhibit must be provided, in addition to a copy for each party.
2. **Prefiling.** The commission may permit or require the filing and serving of exhibits in advance of the hearing in order to enable participants to prepare cross-examination.

**History:** Amended effective September 1, 1992.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 49-01-07

**69-02-05-08. Official notice.** The commission may take notice of any fact in its records and files, to which reference is made on the record at the hearing and any fact judicially noticed by the courts of this state. Official notice will be taken without offer or production of that portion of any tariff or schedule which is the subject matter of an order of investigation or suspension.

**History:** Amended effective September 1, 1992.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-06, 49-01-07

**69-02-05-09. Former employees.** Except with the written permission of the commission, no former employee of the commission or member of the attorney general's staff assigned to the commission may appear in a representative capacity or as an expert witness on behalf of other parties at any time within six months after severing the employee's or member's association with the commission, nor may the employee or member appear after the six-month period in any proceeding in which the employee or member previously took an active part when associated with the commission.

**History:** Amended effective September 1, 1992.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 49-01-07

**69-02-05-10. Interrogatories to parties.** Repealed effective September 1, 1992.

**69-02-05-11. Ex parte communications.** Ex parte communications, as defined in North Dakota Century Code section 28-32-12.1, are strictly prohibited. Any ex parte written communication to the commission must be filed with the executive secretary of the commission who shall disclose the communications to the parties and place the communication in a public file associated with the pending

proceeding, but separate from the record material upon which the commission can rely in reaching its decision.

**History:** Effective September 1, 1992.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 28-32-12.1, 49-01-07

**69-02-05-12. Interrogatories in cases under North Dakota Century Code title 49.**

Any party to a public utility proceeding under North Dakota Century Code title 49 may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Each interrogatory must be answered separately and fully in writing, unless it is objected to, in which event the objecting party shall state the reasons for the objection and shall answer to the extent the interrogatory is not objectionable. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections, if any, within ten business days after the service of the interrogatories. A shorter or longer time may be directed by the commission or, in the absence of such direction, agreed to in writing by the parties. Any ground for an objection to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the commission for good cause shown. A party answering interrogatories shall set out the interrogatory immediately preceding the answer.

**History:** Effective April 1, 2013.

**General Authority:** NDCC 28-32-02

**Law Implemented:** NDCC 49